

Introduced by Senator Perata
(Coauthor: Senator Vasconcellos)

February 18, 2004

An act to amend Section 18564 of, and to add Sections 18564.5, 19214, and 19214.5 to, the Elections Code, relating to elections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1376, as amended, Perata. Voting systems.

Existing law prohibits tampering with voting systems or equipment, making it a felony to tamper with or damage a voting machine, or to make or possess a key to a voting machine without authorization.

~~This bill would make it a felony to gain access without authorization, or provide access without authorization to another person, to a voting machine for the purpose of committing a prohibited act of tampering. The bill also would make it a felony to insert, without authorization, uncertified hardware, software, or firmware into any voting system, software, or equipment, as specified. By changing the definition of a crime, the bill would impose a state-mandated local program.~~

This bill would authorize the Secretary of State, Attorney General, and any local elections official *in the county in which the act occurs*, to bring a civil action against an individual, business, or other legal entity that commits ~~one of the any~~ specified acts *act of tampering with a voting system or voting equipment* before, during, or after an election. *By imposing new duties on local elections officials, this bill would create a state-mandated local program.*

Existing law prohibits the change or modification of any approved voting system or its parts until the Secretary of State has been notified

in writing and makes a determination that the change does not impair the system's accuracy and efficiency, as specified.

~~This bill would provide that failure to notify the Secretary of State prior to any change in hardware, software, or firmware to a certified voting system is punishable pursuant to the above provisions as a felony act of tampering. This bill would authorize the Secretary of State to seek injunctive, administrative, and certain other relief, including monetary damages, for an unauthorized change in hardware, software, or firmware to a voting system.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act shall be known as the "Voting System
- 2 Security Act of 2004."
- 3 SEC. 2. The Legislature finds and declares that the integrity
- 4 of California's voting systems is of paramount concern to all state
- 5 voters. Any action that undermines that integrity must be
- 6 addressed in the most expeditious manner available to state
- 7 authorities. The Secretary of State, elections officials, and legal
- 8 authorities shall be empowered to thwart any effort that casts or



could cast doubt on the validity of the elections process and each voter's right to have his or her vote counted.

~~SEC. 3. Section 18564 of the Elections Code is amended to read:~~

~~18564. Any person is guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years who, before, during, or after an election:~~

~~(a) Tamper, interfere, or attempt to interfere with the correct operation of, or willfully damages in order to prevent the use of, any voting machine, voting device, voting system, vote tabulating device, or ballot tally software.~~

~~(b) Interfere or attempt to interfere with the secrecy of voting or ballot tally software program source codes.~~

~~(c) Knowingly, and without authorization, gain access to or provide another person or persons with access to a voting machine for the purpose of committing one of the acts prohibited by this section.~~

~~(d) Willfully substitute or attempt to substitute forged, counterfeit, or malicious ballot tally software program source codes.~~

~~(e) Knowingly, and without authorization, insert or cause the insertion of uncertified hardware, software, or firmware, for whatever purpose, into any voting machine, voting device, voting system, vote tabulating device, or ballot tally software.~~

~~SEC. 4. Section 18564.5 is added to the Elections Code, to read:~~

~~18564.5. The Secretary of State, Attorney General, and any local elections official in this state may bring a civil action against an individual, business, or other legal entity that commits one of the acts specified in Section 18564 before, during, or after an election.~~

~~SEC. 5.—~~

~~SEC. 3. Section 18564.5 is added to the Elections Code, to read:~~

~~18564.5. (a) The Secretary of State, Attorney General, and any local elections official in the county in which the act occurs, may bring a civil action against an individual, business, or other legal entity that commits any of the following acts before, during, or after an election:~~

1 (1) *Tampers, interferes, or attempts to interfere with the correct*
2 *operation of, or willfully damages in order to prevent the use of,*
3 *any voting machine, voting device, voting system, vote tabulating*
4 *device, or ballot tally software.*

5 (2) *Interferes or attempts to interfere with the secrecy of voting*
6 *or ballot tally software program source codes.*

7 (3) *Knowingly, and without authorization, gains access to or*
8 *provides another person or persons with access to a voting*
9 *machine for the purpose of committing one of the acts specified by*
10 *this section.*

11 (4) *Willfully substitutes or attempts to substitute forged,*
12 *counterfeit, or malicious ballot tally software program source*
13 *codes.*

14 (5) *Knowingly, and without authorization, inserts or causes the*
15 *insertion of uncertified hardware, software, or firmware, for*
16 *whatever purpose, into any voting machine, voting device, voting*
17 *system, vote tabulating device, or ballot tally software.*

18 (6) *Fails to notify the Secretary of State prior to any change in*
19 *hardware, software, or firmware to a voting system certified or*
20 *conditionally certified for use in this state.*

21 (b) *A civil action may be brought pursuant to this section for a*
22 *civil penalty not to exceed fifty thousand dollars (\$50,000) for each*
23 *act and for injunctive relief, if appropriate.*

24 SEC. 4. Section 19214 is added to the Elections Code, to read:
25 ~~19214. Failure to notify the Secretary of State prior to any~~
26 ~~change in hardware, software, or firmware to a voting system~~
27 ~~certified or conditionally certified for use in this state is punishable~~
28 ~~under Sections 18564 and 18564.5. The Secretary of State may~~
29 ~~also~~

30 19214. *The Secretary of State may seek injunctive and*
31 *administrative relief when a voting system has been compromised*
32 *by the addition or deletion of hardware, software, or firmware*
33 *without prior approval.*

34 ~~SEC. 6.~~

35 SEC. 5. Section 19214.5 is added to the Elections Code, to
36 read:

37 19214.5. (a) The Secretary of State may seek all of the
38 following relief for an unauthorized change in hardware, software,
39 or firmware to any voting system certified or conditionally
40 certified in California:

(1) Monetary damages from the offending party or parties, not to exceed ten thousand dollars (\$10,000) per violation. For purposes of this subdivision, each voting machine found to contain the unauthorized hardware, software, or firmware shall be considered a separate violation. Damages imposed pursuant to this subdivision shall be apportioned 50 percent to the county in which the violation occurred, if applicable, and 50 percent to the Office of the Secretary of State for purposes of bolstering voting systems security efforts.

(2) Immediate commencement of decertification proceedings for the voting system in question.

(3) Refund of all ~~monies~~ moneys paid by a locality for a compromised voting system, whether or not the voting system has been used in an election.

(4) Any other remedial actions authorized by law to prevent unjust enrichment of the offending party.

(b) Prior to seeking any measure of relief under this section, the Secretary of State shall hold a public hearing. The Secretary of State shall give notice of the hearing in the manner prescribed by Section 6064 of the Government Code in a newspaper of general circulation published in Sacramento County. The Secretary of State also shall transmit written notice of the hearing, at least 30 days prior to the hearing, to each county elections official, the offending party or parties, any person that the Secretary of State believes will be interested in the hearing, and any person who requests, in writing, notice of the hearing.

(c) The decision of the Secretary of State, to seek any relief under this section, shall be in writing and state the findings of the secretary. The decision shall be open to public inspection.

~~SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this

1 *act contains costs mandated by the state, reimbursement to local*
2 *agencies and school districts for those costs shall be made*
3 *pursuant to Part 7 (commencing with Section 17500) of Division*
4 *4 of Title 2 of the Government Code. If the statewide cost of the*
5 *claim for reimbursement does not exceed one million dollars*
6 *(\$1,000,000), reimbursement shall be made from the State*
7 *Mandates Claims Fund.*

